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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

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9 Roy Pruitt,

10 Plaintiff,

11 v.

12 Charles Ryan, et al.,

13 Defendants.

No. CV 15-01112-PHX-DGC (MHB)

14 **ORDER**

15 On June 16, 2015, Plaintiff Roy Pruitt, who is confined in the Arizona State Prison
16 Complex-Lewis in Buckeye, Arizona, filed a pro se civil rights Complaint pursuant to 42
17 U.S.C. § 1983 (Doc. 1) and an Application to Proceed In Forma Pauperis. On June 23,
18 2015, he filed a Motion for Appointment of Counsel (Doc. 5). On June 30, 2015,
19 Plaintiff filed a Motion for an Order to Show Cause and a Motion for an Order
20 Compelling Discovery. In a July 6, 2015 Order, the Court denied the deficient
21 Application to Proceed and gave Plaintiff 30 days to pay the filing and administrative
22 fees or file a complete Application to Proceed *In Forma Pauperis*.

23 On July 21, 2015, Plaintiff filed a Motion for Extension of Time, seeking a sixty-
24 day extension of time to comply with the Court's Order. In an August 10, 2015 Order,
25 the Court granted the Motion for Extension of Time and denied without prejudice the
26 Motion for an Order to Show Cause and the Motion for an Order Compelling Discovery.
27 The Court gave Plaintiff 60 days to either pay the filing and administrative fees or file a
28 complete Application to Proceed.

1 On September 1, 2015, Plaintiff filed a Motion for Status of Application to
 2 Proceed In Forma Pauperis. In a September 18, 2015 Order, the Court granted the
 3 Motion for Status to the extent that the Court informed Plaintiff that the Court had not
 4 received an Application to Proceed or certified account statement from him.

5 On September 22, 2015, Plaintiff filed a second Application to Proceed In Forma
 6 Pauperis (Doc. 14) and a certified account statement. The Court will grant the
 7 Application to Proceed and will dismiss the Complaint and this action. In light of the
 8 Court's dismissal of this action, the Court will deny as moot the Motion for Appointment
 9 of Counsel.

10 **I. Second Application to Proceed In Forma Pauperis and Filing Fee**

11 Plaintiff's second Application to Proceed In Forma Pauperis will be granted. 28
 12 U.S.C. § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C.
 13 § 1915(b)(1). The Court will assess an initial partial filing fee of \$2.30. The remainder
 14 of the fee will be collected monthly in payments of 20% of the previous month's income
 15 credited to Plaintiff's trust account each time the amount in the account exceeds \$10.00.
 16 28 U.S.C. § 1915(b)(2). The Court will enter a separate Order requiring the appropriate
 17 government agency to collect and forward the fees according to the statutory formula.

18 **II. Statutory Screening of Prisoner Complaints**

19 The Court is required to screen complaints brought by prisoners seeking relief
 20 against a governmental entity or an officer or an employee of a governmental entity. 28
 21 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff
 22 has raised claims that are legally frivolous or malicious, that fail to state a claim upon
 23 which relief may be granted, or that seek monetary relief from a defendant who is
 24 immune from such relief. 28 U.S.C. § 1915A(b)(1)–(2).

25 A pleading must contain a “short and plain statement of the claim *showing* that the
 26 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8
 27 does not demand detailed factual allegations, “it demands more than an unadorned, the-
 28 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678

1 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere
 2 conclusory statements, do not suffice.” *Id.*

3 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
 4 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,
 5 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual
 6 content that allows the court to draw the reasonable inference that the defendant is liable
 7 for the misconduct alleged.” *Id.* “Determining whether a complaint states a plausible
 8 claim for relief [is] . . . a context-specific task that requires the reviewing court to draw
 9 on its judicial experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s
 10 specific factual allegations may be consistent with a constitutional claim, a court must
 11 assess whether there are other “more likely explanations” for a defendant’s conduct. *Id.*
 12 at 681.

13 But as the United States Court of Appeals for the Ninth Circuit has instructed,
 14 courts must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338,
 15 342 (9th Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less
 16 stringent standards than formal pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam)).

18 If the Court determines that a pleading could be cured by the allegation of other
 19 facts, a *pro se* litigant is entitled to an opportunity to amend a complaint before dismissal
 20 of the action. *See Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (en banc).
 21 Plaintiff’s Complaint will be dismissed for failure to state a claim, without leave to
 22 amend because the defects cannot be corrected.

23 **III. Complaint**

24 In his one-count Complaint, Plaintiff names as Defendants Arizona Department of
 25 Corrections Director Charles Ryan, Deputy Warden Morris, Correctional Officer
 26 IV/Grievance Coordinator Perez, Paralegal Ulibarri, and Librarian Ruboyianes. Plaintiff
 27 seeks declaratory and injunctive relief, monetary damages, a jury trial, and his costs of
 28 suit.

1 Plaintiff alleges that he was denied access to the courts, in violation of his Sixth
2 and Fourteenth Amendment rights. Plaintiff alleges that on July 3, 2013, he requested
3 indigent legal supplies from Defendants Ulibarri and Ruboyianes. He claims that on
4 July 9, 2013, Defendant Ruboyianes notified Plaintiff that his request had been denied,
5 even though Plaintiff had clearly indicated in his request that he had a July 18, 2013
6 deadline to file an amended supplemental brief. Plaintiff asserts that Defendant
7 Ruboyianes denied Plaintiff's request again on July 15, 2013.

8 Plaintiff contends that Defendant Ruboyianes came to Plaintiff's cell on July 18,
9 2013 (the deadline for filing the amended supplemental brief), and demanded proof that
10 Plaintiff had an active court case. Plaintiff showed Defendant Ruboyianes an order that
11 set a deadline to file a supplemental brief in Plaintiff's direct appeal. Defendant
12 Ruboyianes told Plaintiff that it would take two weeks for Plaintiff to get his legal
13 supplies. This caused Plaintiff to miss the deadline.

14 Plaintiff also asserts that he filed an inmate grievance with Defendant Perez, but it
15 was returned unprocessed. Plaintiff's appeal to the warden and appeal to the director
16 were "intercepted" by Defendant Perez and returned to Plaintiff "in an attempt to stop
17 [Plaintiff] from accessing the courts."

18 Plaintiff contends that Defendants Ulibarri and Ruboyianes interfered with his
19 access to the courts and caused him to miss a court-ordered deadline. He also claims that
20 Defendant Perez tried to stop Plaintiff's access to the courts and that Defendants Ryan
21 and Morris "allowed these actions by not enforcing Department Policy."

22 **IV. Failure to State a Claim**

23 Although *pro se* pleadings are liberally construed, *Haines v. Kerner*, 404 U.S. 519,
24 520-21 (1972), conclusory and vague allegations will not support a cause of action. *Ivey*
25 *v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). Further, a
26 liberal interpretation of a civil rights complaint may not supply essential elements of the
27 claim that were not initially pled. *Id.*

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1 To state a valid claim under § 1983, plaintiffs must allege that they suffered a
 2 specific injury as a result of specific conduct of a defendant and show an affirmative link
 3 between the injury and the conduct of that defendant. *See Rizzo v. Goode*, 423 U.S. 362,
 4 371-72, 377 (1976). There is no *respondeat superior* liability under § 1983, and
 5 therefore, a defendant’s position as the supervisor of persons who allegedly violated
 6 Plaintiff’s constitutional rights does not impose liability. *Monell v. New York City Dep’t*
 7 *of Soc. Servs.*, 436 U.S. 658, 691-92 (1978); *Hamilton v. Endell*, 981 F.2d 1062, 1067
 8 (9th Cir. 1992); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). “Because vicarious
 9 liability is inapplicable to *Bivens* and § 1983 suits, a plaintiff must plead that each
 10 Government-official defendant, through the official’s own individual actions, has
 11 violated the Constitution.” *Iqbal*, 556 U.S. at 676. “A plaintiff must allege facts, not
 12 simply conclusions, that show that an individual was personally involved in the
 13 deprivation of his civil rights.” *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir.
 14 1998).

15 The right of meaningful access to the courts prohibits officials from actively
 16 interfering with inmates’ attempts to prepare or file legal documents. *Lewis v. Casey*,
 17 518 U.S. 343, 350 (1996). Prisoners have a right under the First and Fourteenth
 18 Amendments to litigate their claims “without *active interference* by prison officials.”
 19 *Silva v. DiVittorio*, 658 F.3d 1090, 1103 (9th Cir. 2011) (emphasis in original).

20 As a matter of standing for an access-to-courts claim, a plaintiff must show that he
 21 suffered an “actual injury”—i.e., “actual prejudice with respect to contemplated or
 22 existing litigation, such as the inability to meet a filing deadline or to present a claim.”
 23 *Lewis*, 518 U.S. at 348 (citation omitted). *See Davis v. Goord*, 320 F.3d 346, 352 (2d Cir.
 24 2003) (“Mere ‘delay in being able to work on one’s legal action or communicate with the
 25 courts does not rise to the level of a constitutional violation.’”) (citations omitted); *cf.*
 26 *Silva*, 658 F.3d at 1104 (actual injury alleged where plaintiff claimed pending lawsuits
 27 had been dismissed as the result of defendants’ actions). Where, as here, a prisoner is
 28 asserting a backward-looking denial of access claim—one that seeks a remedy for a lost

1 opportunity to present a legal claim—he must show, among other things, “the loss of a
 2 ‘nonfrivolous’ or ‘arguable’ underlying claim.” *Phillips v. Hust*, 477 F.3d 1070, 1076
 3 (9th Cir. 2007), *vacated on other grounds*, 555 U.S. 1150 (2009).

4 Although Plaintiff may have missed the deadline to file his amended supplemental
 5 brief, he suffered no injury. In a Memorandum Decision issued by the Arizona Court of
 6 Appeals in Plaintiff’s direct criminal appeal, *Arizona v. Pruitt*, CA-CR 12-0625 (Ariz. Ct.
 7 App. 2013),¹ the Arizona Court of Appeals noted that Plaintiff had filed an “untimely
 8 amended supplemental brief” on August 26, 2013. *Id.* at ¶10 n.4. However, the Arizona
 9 Court of Appeals stated that “[g]iven the nature of an *Anders* appeal, the arguments in
 10 Pruitt’s August 26, 2013 brief **have been considered on the merits.**” *Id.* (emphasis
 11 added). The Arizona Court of Appeals identified the issues Plaintiff asserted in his
 12 supplemental briefs, *id.* at ¶10, and stated that it had “read and considered counsel’s brief
 13 and Pruitt’s supplement[al] briefs, and ha[d] search the record provided for reversible
 14 error,” but had found none. *Id.* at ¶24 (emphasis added). Because the Arizona Court of
 15 Appeals considered and addressed on the merits the issues raised in Plaintiff’s untimely
 16 amended supplemental brief, Plaintiff suffered no injury from missing the filing deadline.
 17 Thus, the Court will dismiss Plaintiff’s access-to-the-courts claim.

18 In addition, to the extent Plaintiff is raising a claim based on Defendant Perez’s
 19 failure to process his grievances, he has failed to state a claim. “There is no legitimate
 20 claim of entitlement to a grievance procedure,” *Mann v. Adams*, 855 F.2d 639, 640 (9th
 21 Cir. 1988), and the failure to follow grievance procedures does not give rise to a due
 22 process claim. *See Flournoy v. Fairman*, 897 F. Supp. 350, 354 (N.D. Ill. 1995) (jail
 23 grievance procedures did not create a substantive right enforceable under § 1983);
 24 *Spencer v. Moore*, 638 F. Supp. 315, 316 (E.D. Mo. 1986) (violations of grievance
 25 system procedures do not deprive inmates of constitutional rights). “[N]o constitutional
 26 right was violated by the defendants’ failure, if any, to process all of the grievances

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 28 ¹ See <http://www.azcourts.gov/Portals/0/OpinionFiles/Div1/2013/1%20CA-CR%2012-0625-171710.pdf> (last accessed Oct. 1, 2015).

1 [plaintiff] submitted for consideration.” *Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir.
 2 1993). In addition, “[t]he right to petition the government for redress of grievances . . .
 3 does not guarantee a favorable response, or indeed any response, from state officials.
 4 Moreover, the First Amendment’s right to redress of grievances is satisfied by the
 5 availability of a judicial remedy.” *Baltoski v. Pretorius*, 291 F. Supp. 2d 807, 811 (N.D.
 6 Ind. 2003); *see also Ashann-Ra v. Virginia*, 112 F. Supp. 2d 559, 569 (W.D. Va. 2000)
 7 (failure to comply with state’s grievance procedure is not actionable under § 1983 and
 8 does not compromise an inmate’s right of access to the courts). Thus, the Court will
 9 dismiss Plaintiff’s claim regarding the grievance process.

10 Finally, because Defendants Ruboyianes, Ulibarri, and Perez did not violate
 11 Plaintiff’s constitutional rights, Plaintiff’s claim that Defendants Ryan and Morris
 12 “allowed these actions by not enforcing Department Policy,” also fails.

13 **IT IS ORDERED:**

14 (1) Plaintiff’s second Application to Proceed In Forma Pauperis (Doc. 14) is
 15 **granted.**

16 (2) As required by the accompanying Order to the appropriate government
 17 agency, Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing
 18 fee of \$2.30.

19 (3) The Complaint (Doc. 1) is **dismissed** for failure to state a claim pursuant to
 20 28 U.S.C. § 1915A(b)(1), and the Clerk of Court must enter judgment accordingly.

21 (4) The Clerk of Court must make an entry on the docket stating that the
 22 dismissal for failure to state a claim may count as a “strike” under 28 U.S.C. § 1915(g).

23 (5) Plaintiff’s Motion for Appointment of Counsel (Doc. 5) is **denied as moot.**

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4 Dated this 6th day of October, 2015.

Daniel G. Campbell

David G. Campbell
United States District Judge